

From: afowler@themis.ncifcrf.gov@inetgw
To: Microsoft ATR
Date: 11/20/01 2:06pm
Subject: Proposed Microsoft Settlement

I am writing to express concern over the details of the proposed settlement in the Microsoft antitrust case. While it is debatable whether Judge Thomas Penfield Jackson's original breakup order, which has since been vacated, was too extreme, the appeals court unanimously accepted his findings of fact and affirmed that Microsoft is an illegal monopolist.

My concern is over how weak the current settlement is. Microsoft has in the past completely ignored consent decrees, which is what the new settlement amounts to. That aside, I would support a consent decree which actually allowed for significant penalties for non-compliance; however, the only penalty for engaging in future monopolistic behavior seems to be an extension of the "enforcement" period by two years, which essentially leaves the company free to continue on its current course of controlling the market by any means available. Many individuals I've spoken to seem to harbor the opinion that the Justice Department has sold out on this settlement proposal.

I do not know how to go about fixing the situation without the probability of further lengthy appeals. I do, however, know that the current proposal lacks any sort of real punitive muscle, and some real punishment and/or enforcement is needed to prevent a continuation of the status quo. If a structural remedy is seen as too harsh, at least some significant financial penalty (a minimum of 5-10% of the company's net worth) should be applied. Furthermore, at the very least given the company's past behavior under a consent decree, the current proposed settlement could be acceptable provided that there are severe penalties for non-compliance.

Sincerely,
Andrew Fowler

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| Andrew Fowler | NCI - Frederick |
| Postdoctoral Fellow | PO Box B, Frederick, MD 21702 |
| afowler@ncifcrf.gov | 301-846-6951 (work) / 301-846-6231 (fax) |